

WORKERS' COMPENSATION DIVISION[876]

Adopted and Filed

Rule making related to electronic filing and reaching settlements

The Workers' Compensation Commissioner hereby amends Chapter 1, "Purpose and Function," Chapter 2, "General Provisions," Chapter 3, "Forms," Chapter 4, "Contested Cases," Chapter 6, "Settlements and Commutations," Chapter 8, "Substantive and Interpretive Rules," Chapter 9, "Public Records and Fair Information Practices," and Chapter 11, "Electronic Data Interchange (EDI)," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 86.8.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapters 17A, 22, 85, 85A, 85B, 86 and 87.

Purpose and Summary

The purpose of this rule making is to update language in the rules for consistency with the implementation of the electronic filing system, to update the waiver provisions for the electronic filing system, to allow represented parties more flexibility in reaching settlements, to update outdated language, and to increase the filing fee.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on November 30, 2022, as **ARC 6701C**. No public comments were received. One change from the Notice has been made in rule 876—4.17(17A,85,86) in Item 29 to include "physician assistants" pursuant to 2022 Iowa Acts, House File 803.

Adoption of Rule Making

This rule making was adopted by the Commissioner on January 4, 2023.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Commissioner for a waiver of the discretionary provisions, if any, pursuant to rule 876—12.4(17A).

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's

meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rule making will become effective on March 15, 2023.

The following rule-making actions are adopted:

ITEM 1. Amend rule 876—1.2(86,17A) as follows:

876—1.2(86,17A) Location. Interested persons may contact the Iowa Workers' Compensation Commissioner, 150 Des Moines Street, Des Moines, Iowa 50309; telephone (515)725-4120 or 1-800-645-4583. The fax number is (515)281-6501. The website address is www.iowaworkforce.org/we www.iowaworkcomp.gov.

ITEM 2. Amend rule 876—2.1(86) as follows:

876—2.1(86) Extending time and continuances. ~~For good cause the~~ The workers' compensation commissioner or the commissioner's designee a deputy workers' compensation commissioner may modify the time to comply with any rule for good cause.

This rule is intended to implement Iowa Code chapter 86.

ITEM 3. Amend rule 876—2.2(85A,85B,86,87) as follows:

876—2.2(85,85A,85B,86,87) Applicability. When appropriate, all rules shall apply to Iowa Code chapters 85, 85A, 85B, 86 and 87 as well as chapter 85.

This rule is intended to implement Iowa Code chapters 85, 85A, 85B, 86 and 87.

ITEM 4. Adopt the following new implementation sentence in rule **876—2.3(86,87)**:

This rule is intended to implement Iowa Code chapters 86 and 87.

ITEM 5. Amend rule 876—2.5(85,85A,85B,86) as follows:

876—2.5(85,85A,85B,86) Use of workers' compensation electronic system (WCES) for submission of filings. ~~The division of workers' compensation requires the filing of electronic~~ Electronic data interchange (EDI) information, forms, petitions, pleadings, responses, motions, briefs, and any other submissions to be effectuated by use of shall be filed through the workers' compensation electronic system (WCES). The website address for WCES is efile.iowaworkcomp.gov www.iowaworkcomp.gov/efile. ~~The division of workers' compensation may provide exceptions to the mandatory use of WCES in contested claims. Any electronic filing that is quarantined due to a virus will not be considered received. Any electronic filing that is quarantined due to a virus will not be considered received.~~

2.5(1) ~~The division of workers' compensation shall may grant exceptions for filing in WCES for good cause, such as a power outage at the filer's office or home a request for waiver of the mandatory use of WCES in contested cases, pursuant to rule 876—12.4(17A).~~

2.5(2) ~~The division of workers' compensation shall grant exceptions for part or the duration of a case for good cause, such as when a filer cannot use a computer or does not have regular access to the Internet at home through a device capable of displaying documents. This inability to file in or follow the case could put a filer at a disadvantage before the agency. Only a deputy workers' compensation commissioner or the workers' compensation commissioner can grant an exception for the duration of a request for waiver of the mandatory use of WCES in a contested case.~~

2.5(3) ~~The commissioner or the commissioner's designee shall allow the filing of paper documents in case of a systemic failure of WCES. If the division of workers' compensation grants a waiver of the mandatory use of WCES in a contested case, the division of workers' compensation shall file paper documents received from the filer in WCES.~~

This rule is intended to implement Iowa Code chapters 85, 85A, 85B and 86.

ITEM 6. Amend rule 876—2.7(86) as follows:

876—2.7(86) Official record. The electronic record made and maintained by the division of workers' compensation is the official record of a contested case ~~unless different means are ordered by the commissioner or deputy commissioner or unless a proceeding is not required to use WCES. The division may require parties to scan and file in WCES pleadings, exhibits and other records that were filed as paper documents before the establishment of WCES.~~

This rule is intended to implement Iowa Code chapters 85, 85A, 85B and 86.

ITEM 7. Amend rule 876—2.8(86) as follows:

876—2.8(86) Document requirements. Pleadings, responses to pleadings, exhibits, and transcripts submitted to the division of workers' compensation shall be scanned, attached, and filed in portable document format (pdf) or as image-on-text documents (searchable pdf). A hearing report or proposed order or proposed ruling shall be submitted ~~in Microsoft Word format as a pdf or searchable pdf.~~ Transcripts submitted shall include an index. Filings shall not exceed ~~30~~ 20 megabytes (MB). Documents exceeding ~~30~~ 20 MB shall be divided and submitted as separate attachments to comply with this size limit. All filings pursuant to this rule shall be submitted via WCES unless otherwise ordered by the workers' compensation commissioner; or a deputy workers' compensation commissioner or other agency staff who have been delegated authority by the commissioner. Audio or video files shall use MP3 or MP4 format and should be submitted with a virus-scanned USB drive ~~or DVD~~ and shall not exceed 500 MB for each filing.

This rule is intended to implement Iowa Code chapters 85, 85A, 85B and 86.

ITEM 8. Rescind and reserve rule **876—2.9(86).**

ITEM 9. Amend subrules 3.1(1) and 3.1(2) as follows:

3.1(1) First report of injury (FROI). ~~The first report of injury (FROI)~~ FROI contains general information concerning the employee, the employer and the claimed injury. ~~It~~ A FROI is to be filed whether or not an adjudication or admission of liability for the injury exists and is to be filed as provided in Iowa Code section 86.11 and 876—Chapter 11. ~~The first report of injury FROI~~ FROI is to be filed when demanded by the commissioner pursuant to Iowa Code section 86.12 and when an employer is served with an original notice and petition that alleges an injury for which a ~~first report FROI~~ FROI has not been filed. If an original notice and petition alleges multiple injury dates, only one ~~first report of injury FROI~~ FROI should be filed, and the date of injury reported should be the date the reporter uses when adjusting the claim.

3.1(2) Subsequent report of injury (SROI).

a. ~~The subsequent report of injury (SROI)~~ SROI provides for filing of notice of commencement of payments, correcting erroneous claim information, supplying additional information, denying compensability, agreeing to the weekly benefit rate and agreeing to make payments under the Workers' Compensation Act, reporting the status of a claim, or recording benefits paid. Notice of commencement of payments shall be filed within 30 days of the first payment. When liability on a claim is denied, a letter shall be sent to claimant stating reasons for denial. The SROI shall also be filed when compensation is terminated or interrupted. Medical data supporting the action taken shall be filed when temporary total disability or temporary partial disability exceeds 13 weeks or when the employee sustains a permanent disability.

b. No change.

ITEM 10. Amend subrule 3.1(7) as follows:

3.1(7) Form—original notice and petition. The following forms are types of original notice and petition: original notice and petition—Form 100 (Form No. 14-0005); original notice, and petition, ~~answer and order~~ concerning application for independent medical examination—Form 100A (Form No. 14-0007); answer and order concerning application for independent medical examination—Form 100A (Form No. 14-0007A); original notice, and petition, ~~answer and order~~ concerning vocational rehabilitation program benefit—Form 100B (Form No. 14-0009); answer concerning vocational

rehabilitation program benefit—Form 100B (Form No. 14-0009A); original notice, petition, ~~and answer~~ concerning application for alternate medical care—Form 100C (Form No. 14-0011); answer concerning application for alternate medical care—Form 100C (Form No. 14-0011A); original notice, ~~and petition, and answer~~ concerning application for vocational training and education—Form 100D (Form No. 14-0012); answer concerning application for vocational training and education—Form 100D (Form No. 14-0012A); original notice and petition for full commutation of all remaining benefits of ten weeks or more 876 IAC 6.2(6)—Form 9 (Form No. 14-0013); ~~checklist for full commutation (Form No. 14-0015); and~~ original notice and petition and order for partial commutation—Form 9A (Form No. 14-0017); ~~and checklist for partial commutation (Form No. 14-0019)~~. See rule 876—4.6(85,86,17A) for further descriptions.

ITEM 11. Amend subrules 3.1(18) and 3.1(19) as follows:

3.1(18) *Form No. 9—original notice and petition ~~and order~~ for commutation of all remaining benefits of ten weeks or more 876 IAC 6.2(6). (Form No. 14-0013)* This form contains data relevant to benefits paid and those to be paid by commutation when all unaccrued benefits are due. Signatures of the parties are necessary. Approval by the workers' compensation commissioner or a deputy workers' compensation commissioner is necessary. The form contains language of release.

3.1(19) *Form No. 9A—original notice and petition ~~and order~~ for partial commutation. (Form No. 14-0017)* This form contains the same data and requirements as Form No. 9. However, all remaining benefits are not commuted. No language of release is contained.

ITEM 12. Rescind subrule 3.1(27) and adopt the following **new** subrule in lieu thereof:

3.1(27) *Form—nonelection of workers' compensation or employers' liability coverage. (Form No. 14-0175)* This form is used for exclusion from liability coverage pursuant to Iowa Code section 87.22.

ITEM 13. Rescind subrule 3.1(28) and adopt the following **new** subrule in lieu thereof:

3.1(28) *Form—shorthand reporter identification form. (Form No. 14-0178)* This form is used to identify the official shorthand reporter and custodian of the notes for a hearing.

ITEM 14. Amend subrule 3.1(29) as follows:

3.1(29) *Form—~~application to be excused from filing in WCES request for waiver of the mandatory use of WCES.~~ (Form No. 14-0176)* This form is used by a self-represented party to request permission a waiver from those rules requiring filing in WCES and allows a party to file and serve documents in paper form and be excused from using WCES.

ITEM 15. Rescind and reserve subrule **4.1(13)**.

ITEM 16. Amend rule 876—4.2(86) as follows:

876—4.2(86) Separate evidentiary hearing or consolidation of proceedings. A person presiding over a contested case proceeding in a workers' compensation matter may conduct a separate evidentiary hearing for determination of any issue in the contested case proceeding which goes to the whole or any material part of the case. An order determining the issue presented shall be issued before a hearing is held on the remaining issues. The issue determined in the separate evidentiary hearing shall be precluded at the hearing of the remaining issues. If the order on the separate issue does not dispose of the whole case, it shall be deemed interlocutory for purposes of appeal.

When any contested case proceeding shall be filed prior to or subsequent to the filing of an arbitration or review-reopening proceeding and is of such a nature that it is an integral part of the arbitration or review-reopening proceeding, it shall be deemed merged with the arbitration or review-reopening proceeding. No appeal to the workers' compensation commissioner of a deputy workers' compensation commissioner's order in such a merged proceeding shall be had separately from the decision in arbitration or review-reopening unless appeal to the commissioner from the arbitration or review-reopening decision would not provide an adequate remedy.

Entitlement to denial or delay benefits provided in Iowa Code section 86.13 shall be pled, and if pled, discovery shall be limited to matters discoverable in the absence of such pleading unless it is bifurcated.

The claimant may bifurcate the denial or delay issue by filing and serving a notice of bifurcation at any time before a case is assigned for hearing, in which case discovery on that issue may proceed only after the final decision of the agency on all other issues.

This rule is intended to implement Iowa Code sections 86.13, 86.18 and 86.24.

ITEM 17. Amend rule 876—4.3(85,85A,86,87) as follows:

876—4.3(85,85A,86,87) Compliance proceedings. If the workers' compensation commissioner shall have reason to believe that there has not been compliance with the workers' compensation law by any person or entity, the workers' compensation commissioner may on the workers' compensation commissioner's own motion give notice to the person or entity and schedule a hearing for the purpose of determining whether or not there has been compliance by the person or entity. The notice shall state the time and place of the hearing and a brief statement of the matters to be considered. The notice of hearing may be given by ordinary mail or by WCES if the alleged noncompliant person or entity is registered in WCES and is currently participating in a contested case using WCES and may be given to the insurer for the employer in lieu of the employer as permitted by Iowa Code section 87.10 if the insurer has filed a report, pleading or motion that acknowledges that it is the insurer for the claim at issue. Following the hearing, the workers' compensation commissioner or a deputy workers' compensation commissioner may issue a finding regarding compliance. In the event a failure to comply is found, the workers' compensation commissioner may impose sanctions in accordance with Iowa Code section 86.12, 86.13 or 86.13A or order compliance within a specified time and under specified circumstances. The workers' compensation commissioner may file a certified copy of the order in an appropriate district court and may file a certified copy of the order with the Iowa insurance division of the department of commerce with a request for action by the insurance division upon failure to comply with the order.

Nothing in this rule shall prevent the workers' compensation commissioner from conducting an informal conference with any person or entity concerning problems of compliance prior to the initiation of a compliance proceeding.

This rule is intended to implement Iowa Code chapters 85, 85A, 86 and 87.

ITEM 18. Amend rule 876—4.4(86) as follows:

876—4.4(86) Request for hearing. ~~Unless otherwise ordered, a~~ A hearing shall not be held in proceedings under subrules 4.1(8) to 4.1(13) 4.1(12), unless otherwise ordered or requested in writing by the petitioner in the original notice or petition or by the respondent within ten days following the time allowed by these rules for appearance.

This rule is intended to implement Iowa Code chapter 86.

ITEM 19. Amend rule 876—4.5(86) as follows:

876—4.5(86) Commencement by the workers' compensation commissioner. In addition to an aggrieved party, the workers' compensation commissioner may initiate proceedings under subrule 4.1(10). The proceeding may be held before a deputy workers' compensation commissioner or the workers' compensation commissioner. The workers' compensation commissioner shall be the only person to commence a proceeding under subrule 4.1(14), unless such authority is specifically delegated by the workers' compensation commissioner to a deputy workers' compensation commissioner concerning a specific matter.

This rule is intended to implement Iowa Code chapter 86.

ITEM 20. Amend rule 876—4.6(85,86,17A) as follows:

876—4.6(85,86,17A) Original notice and petition. A petition or application must be delivered or filed with the original notice unless original notice Form 100, Form 100A, Form 100B, or Form 100D of the division of workers' compensation is used.

The original notice Form 100, Form 100A, Form 100B, Form 100C, Form 100D, or a determination of liability reimbursement for benefits paid and recovery of interest form shall provide for the data

required in Iowa Code section 17A.12(2) and shall contain factors relevant to the contested case proceedings listed in rule 876—4.1(85,85A,85B,86,87,17A). Form 100 is to be used for all contested case proceedings except as indicated in this rule. Form 100A is to be used for the contested case proceedings provided for in ~~subrules~~ subrule 4.1(12) and 4.1(13). Form 100B is to be used for the contested case proceeding provided for in subrule 4.1(8). Form 100C is to be used for the contested case proceeding provided for in subrule 4.1(15) and rule 876—4.48(17A,85,86). Form 100D is to be used for the contested case proceeding provided for in rule 876—4.50(85). The application and consent order for payment of benefits under Iowa Code section 85.21 is to be used for contested case proceedings brought under Iowa Code section 85.21. When a commutation is sought, Form No. 9 14-0013 or Form No. ~~9A~~ 14-0017 must be filed in addition to any other document. The petition for declaratory order, approval of attorney fees, determination of compliance and other proceedings not covered in the original notice forms must accompany the original notice.

At the same time and in the same manner as service of the original notice and petition, the claimant shall serve a patient's waiver using Form 14-0043 (authorization for release of information regarding claimants seeking workers' compensation benefits), or a substantially equivalent form, which shall not be revoked until conclusion of the contested case. The claimant shall provide the patient's waivers in other forms and update the patient's waivers as necessary to permit full disclosure of discoverable information whenever requested by a medical practitioner or institution.

A separate original notice and petition shall be filed for each claim that seeks benefits due to the occurrence of an injury, occupational disease or occupational hearing loss. The original notice and petition shall allege a specific date of occurrence consisting of a day, month and year. Alternate or multiple dates of occurrence may be alleged in the same original notice and petition if the claim or claims arose from the same occurrence or series of occurrences and uncertainty exists concerning the correct date of occurrence or the number of occurrences. An employee may join any number of employers or insurance carriers in the same original notice and petition if the claim is made against them jointly, severally or in the alternative. The remedy for misjoinder must be requested by motion within a reasonable time after the grounds become known, but in no event later than the claimant's case preparation completion date. All remedies will be applied without prejudice to any claim or defense. In addition to the remedies contained in Iowa Rule of Civil Procedure 1.236, the workers' compensation commissioner may order that parts of a claim be severed and proceeded with separately or that separate related claims be joined or consolidated for administrative convenience or for any good cause. If a correction is ordered but not made by a date specified in the order, the original notice and petition may be dismissed without further notice. If the correction is made within the specified time, the correction relates back to the date of the initial filing for purposes of the statute of limitations.

This rule is intended to implement Iowa Code sections 85.27, 85.45, 85.48, and 17A.12.

ITEM 21. Amend rule 876—4.7(86,17A) as follows:

876—4.7(86,17A) Delivery of notice, orders, rulings and decisions. Delivery of the original notice shall be made by the petitioning party as provided in Iowa Code section 17A.12(1) except that a party may deliver the original notice on a nonresident employer as provided in Iowa Code section 85.3. A proposed or final decision, order or ruling may be delivered by the division of workers' compensation to any party by regular mail, by email or by WCES. Filing of a notice, ruling and decision in WCES is the official filing and start of any appeal or motion deadline. ~~Parties registered in WCES for a claim will be sent a courtesy email informing the parties of a filing.~~

This rule is intended to implement Iowa Code sections 85.3 and 17A.12.

ITEM 22. Amend rule 876—4.8(86) as follows:

876—4.8(86) Filing of notice.

4.8(1) No change.

4.8(2) Filing fee.

a. For all original notices and petitions for arbitration or review-reopening relating to weekly benefits filed on account of each injury, ~~gradual or cumulative injury~~, occupational disease or occupational hearing loss alleged, a filing fee shall be paid at the time of filing. The filing fee for petitions is ~~\$100~~ \$125. No filing fee is due for the filing of other actions where the sole relief sought is one of the following or a combination of any of them: medical and other benefits under Iowa Code section 85.27; burial benefits, under Iowa Code section 85.28; determination of dependency, under Iowa Code sections 85.42, 85.43, and 85.44; equitable apportionment, under Iowa Code section 85.43; second injury fund, under Iowa Code sections 85.63 to 85.69; vocational rehabilitation benefits, under Iowa Code section 85.70(1); vocational training and education benefits, under Iowa Code section 85.70(2); approval of legal, medical and other fees under Iowa Code section 86.39; commutation, under Iowa Code sections 85.45 to 85.48; employee's examination, under Iowa Code section 85.39; employee's examination or sanctions, under Iowa Code section 85.39; application for alternate care, under Iowa Code section 85.27; determination of liability, reimbursement for benefits paid and recovery of interest, under Iowa Code section 85.21; interest, under Iowa Code section 85.30; penalty, under Iowa Code section 86.13; application for approval of third-party settlement, under Iowa Code section 85.22; and petitions for declaratory orders or petitions for interventions filed pursuant to 876—Chapter 5. An amendment to a petition ~~that was filed on or after July 1, 1988~~, that alleges an additional or alternate date of occurrence does not require payment of an additional filing fee if a filing fee was paid when the petition was filed.

b. A filing fee shall be required for each original notice and petition filed, as required in paragraph 4.8(2) "a." ~~If a party overpays a filing fees have been overpaid, the amount overpaid shall be refunded to fee, the party who made the overpayment may receive a refund. The party who made the overpayment must request a refund before June 1 of the fiscal year in which the overpayment occurred.~~

~~e. and d. Rescinded IAB 11/27/02, effective 1/1/03.~~

~~e.—If the correct filing fee or fees are not paid at the time of filing of the original notice and petition, the workers' compensation commissioner shall enter an order requiring payment of the correct filing fee or fees. If the required correction is not made by a date specified in the order, the original notice and petition shall automatically be dismissed without prejudice without entry of further order. See rule 876—4.36(86). If correction is made within the specified time, the initial filing shall be sufficient to have tolled the statute of limitations.~~

c. If no filing fee is paid at the time of filing of the original notice and petition, the workers' compensation commissioner shall return the original notice and petition to the party filing it. Filing an original notice and petition without paying the fee shall not toll the statute of limitations. Tendering an amount less than required will be considered failure to pay a filing fee.

~~f. d.~~ The filing fee may be taxed as a cost to the losing party in the case. If the filing fee would impose an undue hardship or be unjust in the circumstances for the losing party, the filing fee may be taxed as costs to the winning party in the case. ~~If an original notice and petition is erroneously accepted for filing without payment of the correct filing fee or fees, any unpaid fees may be taxed as costs. See rule 876—4.33(86).~~

~~g. e.~~ The filing fee shall be paid at the same time the petition is filed. The filing fee shall be paid electronically with a credit card ~~or electronic check~~, via automated clearing house (ACH), or by other electronic means as allowed by WCES. ~~Checks should be made, unless an order granting permission for nonelectronic payment has been issued. If an order granting permission for nonelectronic payment has been issued, the party filing the petition shall issue a check payable to the "Iowa Division of Workers' Compensation." If the payment of the filing fee is made by an account with insufficient funds check or a check on which or the payment is stopped, or a check on which the payment is otherwise not honored, it will be treated as a failure to pay the correct filing fee. See 4.8(2) "e." paragraph 4.8(2) "c." Nonelectronic payment will not be accepted without an order granting permission for nonelectronic payment. Any The statute of limitations is not tolled if a party has requested nonelectronic payment and is awaiting an order.~~

~~h. f.~~ The workers' compensation commissioner may accept for filing an original notice and petition without prepayment of the filing fee if in the discretion of the workers' compensation commissioner the petitioner is unable to pay the fee at the time of filing. A deferral of payment of the

filing fee shall only be granted upon written application by the petitioner. The application shall be filed at the same time the original notice and petition is filed. The application shall be in the form required by the workers' compensation commissioner and shall include an affidavit signed by the petitioner. When payment of the filing fee is deferred, provisions for payment of the filing fee must be included in any settlement submitted to the workers' compensation commissioner for approval or taxed as costs. When the application for deferral of payment of the filing fee is denied, the filing fee shall be paid as ordered. See 4.8(2)“e.” paragraph 4.8(2)“c.” The form for the application deferral of prepayment of fees (Form No. 14-0075) shall not be filed using WCES. The document shall be filed in paper form. If the request for deferral of fees is granted, a claim will be established in WCES. Parties to the claim shall use WCES for future filings, unless a party has been ~~excused from using~~ granted a waiver of the mandatory use of WCES.

~~i. Rescinded IAB 1/29/97, effective 3/5/97.~~

~~j. g.~~ Parties shall use the payment gateway in WCES to pay filing fees, unless an order has been issued allowing deferral of the payment of the filing fee or payment outside of WCES. In addition to the filing fee, the parties shall pay the convenience fee charged by the financial institution that is processing payment for WCES. This cost may be recoverable under rule 876—4.33(86).

This rule is intended to implement Iowa Code section 17A.12.

ITEM 23. Amend rule 876—4.9(17A) as follows:

876—4.9(17A) Appearance and responses, pleadings, motions and settlements. Appearances and responses to pleadings and motions shall be made ~~using the division of workers' compensation's in~~ WCES. Registration with the division of workers' compensation's WCES is required. Registration is accepted at ~~efile.iowaworkcomp.gov~~ www.iowaworkcomp.gov/efile. After a matter has been commenced and the respondent has been served with an original notice and filed an answer or appearance, subsequent filings or submissions in WCES do not require proof of service to parties of record who are registered with WCES. If a party has been granted a waiver of the mandatory use of WCES, the party shall include a proof of service for all parties of record. Attorneys will need to use the AT pin or pro hac vice pin assigned by the Iowa Supreme Court to be associated with a case in WCES. When an attorney is not representing a party, the employer or insurance carrier or the employer's or insurance carrier's agent or claimant shall register in WCES to file the settlement or medical data pursuant to 876—subrule 3.1(2). The filer will receive a status update for the information the filer submits based upon the status the filer selects when registering in WCES.

4.9(1) Respondent—appearance. A respondent shall appear by filing an answer or a motion within 20 days after the service of the original notice and petition upon the respondent in WCES, or if a party has been granted a waiver of the mandatory use of WCES, the respondent shall file an answer or motion within 20 days after service of the original notice and petition upon the respondent with the division of workers' compensation. ~~A respondent shall file a response by answer or motion by using WCES for all claims in which a petition was filed within WCES unless permission has been granted to be excused from using WCES.~~

4.9(2) to 4.9(5) No change.

4.9(6) Form, submission and ruling on motions. All motions, including pre-answer motions and motions for summary judgment, shall have appended to them a concise memorandum brief and argument. All motions ~~and applications~~ except motions for summary judgment shall be deemed submitted without hearing on the record presented on the tenth day following filing. Motions for summary judgment shall be deemed submitted as provided in Iowa Rule of Civil Procedure 1.981. Resistances to motions shall have appended to them a concise memorandum brief and argument and shall be filed on or before the date of submission. Briefs and arguments are waived unless appended to the motion, ~~application or~~ resistance.

An order may be entered consolidating any motion for ruling with the hearing of the contested case. Any party desiring a ruling on a motion prior to the hearing may concisely set forth the necessity of prior ruling in the motion, application or resistance. If a pre-answer motion alleging lack of jurisdiction is overruled or consolidated with hearing of the contested case, the party shall plead to the merits

and proceed to hearing of the contested case without submitting to the jurisdiction of the workers' compensation commissioner. If a motion attacking a pleading is consolidated with hearing of the contested case, the party shall respond to the pleading in the same manner as if the motion had been overruled.

4.9(7) Consolidation. All petitions involving the same claimant and employer will automatically be consolidated. Any party may file a motion to consolidate common questions of fact and law surrounding an injury or a series of injuries. The motion to consolidate shall be deemed approved without an order if no resistance to the motion is filed with the workers' compensation commissioner within ten days of the filing of the motion. ~~No order granting the motion will be filed by the workers' compensation commissioner. As an alternative, the parties may make an oral motion to consolidate common questions of fact or law at the time of the pretrial hearing. A ruling on the motion will be included with the order issued from the pretrial hearing.~~

4.9(8) to 4.9(10) No change.

This rule is intended to implement the provisions of Iowa Code section 17A.12.

ITEM 24. Amend rule 876—4.12(86) as follows:

876—4.12(86) Service on parties. Any document or paper not delivered under rules 876—4.6(85,86,17A) and 876—4.7(86,17A) which is to be filed, ~~or which~~ and seeks relief from or action ~~of or~~ against another party, ~~or which makes argument~~, or which has any significant effect on any contested case, shall be served on each party of record under rule 876—4.13(86).

This rule is intended to implement Iowa Code sections 17A.12 and 86.18.

ITEM 25. Amend rule 876—4.13(86) as follows:

876—4.13(86) Method of service. Except as provided in rules 876—4.6(85,86,17A) and 876—4.7(86,17A), service of all documents and papers to be served according to 876—4.12(86) ~~and 876—4.18(85,86,17A)~~ this chapter or otherwise upon a party represented by an attorney shall be made upon the attorney unless service upon the party is ordered by the workers' compensation commissioner or deputy workers' compensation commissioner. Service upon the attorney or party shall be made using WCES once a party or party's attorney has registered in WCES for the claim being contested. If a party has been ~~allowed to not file with~~ granted a waiver of the mandatory use of WCES or if a party or attorney has not appeared in WCES, service upon the attorney or party shall be made by delivery of a copy or mailing a copy to the last-known address of the attorney or party or, if no address is known, by filing a copy with the division of workers' compensation. Delivery of a copy within this rule means: ~~Handing~~ handing it to the attorney or party; leaving it at the office of the attorney or party's office or with the person in charge of the office; or if there is no one in charge of the office, leaving it in a conspicuous place in the office; or if the office is closed or the person to be served has no office, leaving it at the person's dwelling house, or usual place of abode with some person of suitable age and discretion who is residing at the dwelling or abode. Service by mail under this rule is complete upon mailing. Documents that are served on a party for discovery and medical evidence under rules 876—4.14(86) and 876—4.18(17A,85,86) ~~are~~ shall not ~~to~~ be filed with the division of workers' compensation. No documents or papers referred to in this rule shall be served by the workers' compensation commissioner.

This rule is intended to implement Iowa Code sections 17A.12 and 86.18.

ITEM 26. Amend rule 876—4.14(86) as follows:

876—4.14(86) Filing of documents and papers. All documents and papers required to be served on a party under rule 876—4.12(86) shall be filed with the workers' compensation commissioner either before service or within a reasonable time thereafter. ~~However, unless otherwise ordered by the workers' compensation commissioner or deputy workers' compensation commissioner, no~~ No deposition, notice of deposition, notice of service of interrogatories, ~~interrogatories, request for production of documents, request for admission~~ requests for discovery, notice of responses to requests for discovery, and notice of medical records and reports required to be served by rule 876—4.17(86), and answers and responses

~~thereto shall be filed with or accepted for filing by the workers' compensation commissioner in WCES unless ordered by the workers' compensation commissioner or a deputy workers' compensation commissioner, or its use becomes otherwise necessary in the action, in which case it shall be attached to the relevant motion or response to the motion requiring its use, or unless offered as evidence at hearing of the contested case.~~

This rule is intended to implement Iowa Code section 86.18.

ITEM 27. Amend rule 876—4.15(86) as follows:

876—4.15(86) Proof of service. Proof of service of all documents and papers to be served on another party under rule 876—4.12(86) shall be filed with the division of workers' compensation promptly and, in any event, before action is to be taken thereon by the workers' compensation commissioner or a deputy workers' compensation commissioner or any party unless a responsive pleading has been filed. Proof shall be made by filing the document in WCES when another party is registered in WCES for that claim. If a party or a party's attorney or representative is not in WCES for the claim being contested, the proof shall show the date and manner of service and may be by written acknowledgment of service, by certification of a member of the bar of this state, by affidavit of the person who served the papers, or by any other proof satisfactory to the workers' compensation commissioner.

This rule is intended to implement Iowa Code section 86.18.

ITEM 28. Rescind and reserve rule **876—4.16(86)**.

ITEM 29. Amend rule 876—4.17(17A,85,86) as follows:

876—4.17(17A,85,86) Service of records and reports. Each party to a contested case shall serve all records received pursuant to a patient's waiver (Form 14-0043—authorization for release of information regarding claimants seeking workers' compensation benefits) and medical records and reports concerning the injured worker in the possession of the party upon each opposing party not later than 20 days following filing of an answer or, if not then in possession of a party, within 10 days of receipt. Medical records and reports are records of medical practitioners and institutions concerning the injured worker. Medical practitioners and institutions ~~are medical doctors, osteopaths, include~~ physicians, physician assistants, surgeons, osteopathic physicians and surgeons, chiropractors, dentists, nurses, podiatrists, psychiatrists, psychologists, counselors, hospitals, clinics, persons engaged in physical or vocational rehabilitation or evaluation for rehabilitation, all other practitioners of the healing arts or sciences, and all other institutions in which the healing arts or sciences are practiced. Each party shall serve a notice accompanying the records and reports identifying the records and reports served by the name of the practitioner or institution or other source and date of the records and reports and, if served later than 20 days following filing of the answer, stating the date when the records and reports were received by the party serving them. Pursuant to rule 876—4.14(86), the notice and records and reports shall not be filed with the workers' compensation commissioner. A party failing to comply with the provisions of this rule shall, if the failure is prejudicial to an opposing party, be subject to the provisions of rule 876—4.36(86). This rule does not require a party to serve any record or report that was previously served by another party in a contested case proceeding.

~~For hearings on or after July 1, 2004, compliance~~ Compliance with this rule does not automatically permit a record or report to be received into evidence if the record or report was not served prior to an applicable deadline established by rule or order for completing discovery or service of exhibits.

This rule is intended to implement Iowa Code sections 86.8 and 86.18.

ITEM 30. Amend rule 876—4.19(86) as follows:

876—4.19(86) Prehearing procedure.

4.19(1) No change.

4.19(2) ~~Counsel of record and pro-se litigants~~ The parties have a duty to exercise reasonable diligence to bring the contested case to hearing at the earliest reasonable opportunity.

~~4.19(3) For contested cases that were filed on or after July 1, 2004, the~~ The following time limits govern prehearing procedure, completion of discovery and case management in contested cases, except proceedings under rules 876—4.46(17A,85,86) and 876—4.48(17A,85,86) and except when otherwise ordered by the workers' compensation commissioner or a deputy workers' compensation commissioner.

a. Within 120 days following filing of a petition, the counsel of record for all parties and all ~~pro-se litigants~~ self-represented parties shall request a hearing by using WCES ~~when this function is available to the public in WCES~~. In a case for which ~~permission has been granted to be excused from using WCES~~ a request for waiver of the mandatory use of WCES has been granted, counsel of record for all parties and all ~~pro-se litigants~~ self-represented parties shall jointly contact the hearing administrator by telephone at (515)725-3891 between the hours of 8:30 a.m. and 11 a.m. central time, Monday through Friday, excluding holidays, or by email at dwc.hearing@iwd.state.ia.us to schedule a hearing date, place and time. Claimant has primary responsibility for initiating the contact. The parties shall identify the case by file number and the names of the parties and request that the hearing be set at a specific date, place and time that is shown to be available on the hearing scheduler published on the division's website. Primary and backup times must be requested for hearings in venues other than Des Moines. When the contact is made by email, a copy of the request shall be sent to each opposing party, and the hearing administrator will reply indicating whether or not the case is assigned at the time requested. If a request is denied, the parties shall continue to contact the hearing administrator by telephone or email until the case is scheduled or a prehearing conference is ordered. A joint scheduling contact may be initiated by any party at any other time agreeable to the parties. If more than 120 days have elapsed since the petition was filed, any party may move to schedule the hearing at a particular date, time and place that is available and the hearing administrator may assign the case for hearing at any date, time and place. The hearing date shall be within 12 months following the date the petition was filed or as soon thereafter as reasonably practicable as determined by the hearing administrator. If the parties fail to schedule the hearing with the hearing administrator within nine months of the filing of the original notice and petition, the case will be scheduled at the discretion of the hearing administrator without prior notice to the parties.

b. No change.

c. Discovery responses must be supplemented as required in Iowa Rules of Civil Procedure 1.503(4) and 1.508(3). Discovery responses shall be supplemented within 20 days after a party requests supplementation. All discovery responses, depositions, and reports from independent medical examinations shall be completed and served on opposing counsel and ~~pro-se litigants~~ self-represented parties at least 30 days before hearing. The parties may alter these times by written agreement.

d. At least 30 days before hearing, counsel of record and ~~pro-se litigants~~ self-represented parties shall serve a witness and an exhibit list on all opposing counsel and ~~pro-se litigants~~ self-represented parties and exchange all intended exhibits that were not previously required to be served. The witness list shall name all persons, except the claimant, who will be called to testify at the hearing or who will be deposed prior to the hearing in lieu of testifying at the hearing. The witness and exhibit lists are not filed in WCES. If the exhibit list does not contain actual exhibits, the exhibit list must specifically identify each exhibit in a way that permits the opposing party to recognize the exhibit. The description for a document should include the document's date, number of pages and author or source. ~~Exhibits that were specifically identified when served pursuant to rule 876—4.17(17A,85,86) or in a discovery response may be collectively identified by describing the service such as "exhibits described in the notices served pursuant to rule 876—4.17(17A,85,86) on May 7, June 11 and July 9, 2004."~~ Blanket references such as "all medical records," "personnel file" or "records produced during discovery" do not specifically identify an exhibit. A party may serve a copy of the actual intended exhibits in lieu of an exhibit list. At least 14 days before hearing, counsel of record and ~~pro-se litigants~~ self-represented parties shall file all proposed exhibits in WCES, ~~or, if the counsel of record and pro-se litigants are excused from using WCES, if a party has been granted a waiver of the mandatory use of WCES, the party shall file the proposed exhibits with the division of workers' compensation.~~ Counsel At least seven days before the hearing, counsel of record and ~~pro-se litigants~~ self-represented parties shall file all written objections and motions to exclude evidence ~~at least seven days before the hearing with the division of workers' compensation and serve a copy on all other parties.~~ Objections to exhibits are waived if they are not filed

at least seven days before the hearing. Evidentiary depositions pursuant to Iowa Code section 86.18(2) may be taken at any time before the hearing in lieu of the witness testifying at the hearing.

e. If evidence is offered at hearing that was not disclosed in the time and manner required by these rules, or as altered by order of the workers' compensation commissioner or a deputy workers' compensation commissioner or by a written agreement by the parties, the evidence will be excluded if the objecting party shows that receipt of the evidence would be unfairly prejudicial. Sanctions may be imposed pursuant to rule 876—4.36(86) in addition to or in lieu of exclusion if exclusion is not an effective remedy for the prejudice. If a party offers an exhibit or document in paper form which is accepted by the workers' compensation commissioner or a deputy workers' compensation commissioner, the party shall have five working days to submit an electronic copy of the document by using WCES.

f. At least 14 days before the hearing, counsel of record and ~~pro-se litigants~~ self-represented parties shall prepare and file a joint hearing report that defines the claims, defenses, and issues that are to be submitted to the deputy workers' compensation commissioner who presides at the hearing. The hearing report shall be filed in ~~Microsoft Word format~~ portable document format (pdf) or as an image-on-text document (searchable pdf) as a proposed hearing report. ~~After the hearing report is finalized at the hearing, the deputy commissioner or a party shall save and file the completed hearing report as a pdf or scanned document in WCES.~~ The hearing report shall be signed by all counsel of record and ~~pro-se litigants~~ self-represented parties. The approved hearing report order shall be signed by the deputy workers' compensation commissioner and filed in WCES.

g. If a ~~filer~~ party is unable to meet a nonjurisdictional filing deadline because of a technical failure in WCES, the ~~filer~~ party must file the document using the earliest available electronic or nonelectronic means. The filing of the document will be accepted by the division of workers' compensation as timely unless the workers' compensation commissioner or a deputy workers' compensation commissioner determines that the untimely filing of the document should not be excused otherwise.

h. Jurisdictional deadlines, including but not limited to any applicable statute of limitations, cannot be extended. It is ~~the filer's~~ each party's responsibility to ensure that a document is filed timely to comply with jurisdictional deadlines. A technical failure, including a failure of WCES, will not excuse a failure to comply with a jurisdictional deadline.

i. A ~~filer~~ party is not excused from missing a jurisdictional or nonjurisdictional filing deadline because of problems attributable to the ~~filer (such as telephone line problems, problems with the filer's Internet service provider, hardware problems, software problems, etc.)~~ party.

This rule is intended to implement Iowa Code chapter 86.

ITEM 31. Amend rule 876—4.20(86) as follows:

876—4.20(86) Prehearing conference. A deputy workers' compensation commissioner or the workers' compensation commissioner may order parties in the case to either appear before the workers' compensation commissioner or a deputy workers' compensation commissioner for a conference, or communicate with the commissioner or ~~the commissioner's designee~~ a deputy commissioner and with each other in any manner as may be prescribed to consider, so far as applicable to the particular case:

1. The necessity or desirability of amending pleadings by formal amendment or prehearing order;
2. Agreeing to admissions of facts, documents or records not really controverted, to avoid unnecessary proof;
3. Limiting the number of witnesses;
4. Settling any facts of which the workers' compensation commissioner or a deputy workers' compensation commissioner is to be asked to take official notice;
5. Stating and simplifying the factual and legal issues to be determined;
6. Specifying the items and amounts of compensation claimed;
7. Specifying all proposed exhibits and proof thereof;
8. ~~Consolidation, separation for hearing, and determination of points of law of cases and bifurcation of issues;~~
9. Specifying all witnesses expected to testify;
10. Possibility of settlement;

11. Filing of advance briefs, if any;
12. Setting or altering dates for completion of discovery or completion of medical evidence by each party;

13. Any other matter which may facilitate, expedite, or simplify any contested case.

This rule is intended to implement Iowa Code sections 86.17 and 86.18.

ITEM 32. Amend rule 876—4.21(86) as follows:

876—4.21(86) Prehearing conference record. At the request of any attorney in the case, or at the discretion of a deputy workers' compensation commissioner or the workers' compensation commissioner, the entire prehearing conference or any designated part thereof shall be recorded and the cost of the reporter shall be assessed to the requesting party; or, if directed by the workers' compensation commissioner or deputy workers' compensation commissioner, assessed as costs.

This rule is intended to implement Iowa Code sections 86.17 and 86.18.

ITEM 33. Amend rule 876—4.22(86) as follows:

876—4.22(86) Orders. ~~The~~ A deputy workers' compensation commissioner or the workers' compensation commissioner may enter an order reciting any action taken at ~~the~~ a prehearing conference or pursuant to any other procedures prescribed which will control the subsequent course of action relative to matters which it includes, unless modified to prevent manifest injustice.

This rule is intended to implement Iowa Code sections 86.17 and 86.18.

ITEM 34. Amend rule 876—4.23(86) as follows:

876—4.23(86) Assignment for hearing. Contested cases shall be set for hearing within the discretion of the workers' compensation commissioner as soon as practicable after the parties have had adequate opportunity to prepare for hearing. A party may request in writing that no hearing in a contested case be held until such time as specified matters have been accomplished or specified events have occurred. Continuances of hearings in contested cases shall be granted only by the workers' compensation commissioner or ~~the commissioner's designee~~ a deputy workers' compensation commissioner. Continuances are governed by Iowa Rules of Civil Procedure 1.910-1.912. Requests for continuance shall also state in detail the reasons for the request and whether the opposing party accedes to the request.

~~Defendants~~ The parties shall promptly notify the workers' compensation commissioner of settlements.

This rule is intended to implement Iowa Code sections 86.8 and 86.18.

ITEM 35. Amend rule 876—4.24(17A,86) as follows:

876—4.24(17A,86) Rehearing. Any party may file an application for rehearing of a proposed decision in any contested case by a deputy workers' compensation commissioner or a decision in any contested case by the workers' compensation commissioner within 20 days after the issuance of the decision in WCES. ~~If a party has been allowed to file not using WCES or a party to the claim is not in WCES, a copy of such application shall be timely mailed by the applicant to all parties of record not joining therein. granted a waiver of the mandatory use of WCES, the party shall file the application for rehearing with the division of workers' compensation and serve a copy on the other parties.~~ An application for rehearing shall be deemed denied unless the deputy workers' compensation commissioner or workers' compensation commissioner rendering the decision grants the application within 20 days after its filing. For purposes of this rule, motions or requests for reconsideration or new trial or retrial or any reexamination of any decision, ruling, or order shall be treated the same as an application for rehearing.

This rule is intended to implement Iowa Code chapters 17A, 85, 85A, 85B and 86.

ITEM 36. Amend rule 876—4.25(17A,86) as follows:

876—4.25(17A,86) Appeal when rehearing requested. An appeal to or review on motion of the workers' compensation commissioner must be filed within 20 days after the application for rehearing of a proposed decision by a deputy workers' compensation commissioner under rule 876—4.24(17A,86) has been denied or deemed denied or a decision on rehearing has been issued. If a notice of appeal is filed by one party and an application for rehearing is filed by a different party, the deputy workers' compensation commissioner retains jurisdiction to act on the application for rehearing, and the notice of appeal is stayed and deemed to have been filed on the day after the application for rehearing is denied or deemed denied or the decision on rehearing is issued.

This rule is intended to implement Iowa Code sections 17A.15, 17A.16 and 86.24.

ITEM 37. Amend rule 876—4.27(17A,86) as follows:

876—4.27(17A,86) Appeal. Except as provided in rules 876—4.2(86) and 876—4.25(17A,86), an appeal to the workers' compensation commissioner from a decision, order or ruling of a deputy workers' compensation commissioner in contested case proceedings shall be commenced within 20 days of the filing of the decision, order or ruling by filing a notice of appeal ~~with the workers' compensation commissioner in WCES.~~ If a party has been granted a waiver of the mandatory use of WCES, the party shall file the notice of appeal with the division of workers' compensation and serve a copy on the other parties. If two or more contested cases were consolidated for hearing, a ~~the notice of appeal in one of the cases is an appeal of all the cases~~ shall specify the case number of each case the party wishes to include in the appeal. The date the notice of appeal is filed shall be the date the notice of appeal is received by the agency. *Miller v. Civil Constructors*, 373 N.W.2d 115 (Iowa 1985). The notice shall be served on the opposing parties as provided in rule 876—4.13(86). An appeal shall be heard in Polk County or in any location designated by the workers' compensation commissioner.

An interlocutory decision, order or ruling can be appealed only as hereinafter provided. A decision, order or ruling is interlocutory if, when issued, it does not dispose of all issues in the contested case that are ripe for adjudication. If the sole issue remaining for determination is claimant's entitlement to additional compensation for unreasonable denial or delay of payment pursuant to Iowa Code section 86.13, the decision is not interlocutory. An adjudication that awards ongoing payments of weekly compensation under Iowa Code section 85.33 or 85.34(1) is not interlocutory. The workers' compensation commissioner may, upon application from any party or on the workers' compensation commissioner's own motion, and upon such terms as the workers' compensation commissioner orders, grant an appeal from an interlocutory decision, order or ruling if the workers' compensation commissioner finds that the ruling affects substantial rights, that the ruling will materially affect the final decision and that determination of the correctness of the ruling will better serve the interests of justice.

A cross-appeal may be taken under this rule or rule 876—4.25(17A,86) in the same manner as an appeal within the 20 days for the taking of an appeal or within 10 days after filing of the appeal, whichever is later.

This rule is intended to implement Iowa Code sections 17A.15 and 86.24.

ITEM 38. Amend rule 876—4.28(17A,86) as follows:

876—4.28(17A,86) Briefing requirements on appeal. The workers' compensation commissioner shall decide an appeal upon the record submitted to the deputy workers' compensation commissioner unless the workers' compensation commissioner is satisfied that ~~there exists additional material evidence,~~ newly discovered material evidence exists, which could not ~~with reasonable diligence be have been~~ discovered and produced at the hearing with reasonable diligence. A party must file a request for taking additional evidence in WCES within 20 days after the notice of appeal was filed. If a party has been granted a waiver of the mandatory use of WCES, the party shall file the request for taking additional evidence with the division of workers' compensation and serve a copy on the other parties. Any briefs required or allowed by this rule shall be filed promptly following service.

4.28(1) to 4.28(6) No change.

4.28(7) *Issues considered on appeal.* The appeal will consider the issues presented for review by the appellant and cross-appellant in their briefs and any issues necessarily incident to or dependent upon the issues that are expressly raised, except as provided in rule 876—4.29(86,17A). An issue will not be considered on appeal if the issue could have been, but was not, presented to the deputy workers' compensation commissioner. An issue raised on appeal is decided de novo and the scope of the issue is viewed broadly. If the ruling from which the appeal was taken made a choice between alternative findings of fact, conclusions of law, theories of recovery or defenses and the alternative selected in the ruling is challenged as an issue on appeal, de novo review includes reconsideration of all alternatives that were available to the deputy.

4.28(8) No change.

This rule is intended to implement Iowa Code section 86.24.

ITEM 39. Amend rule 876—4.29(86,17A) as follows:

876—4.29(86,17A) Review upon motion. Except as provided in rule 876—4.25(17A,86), the workers' compensation commissioner may review the decision, order or ruling of a deputy workers' compensation commissioner in any contested case upon the workers' compensation commissioner's own motion. Except as provided in rule 876—4.25(17A,86), the motion to review a decision, order or ruling in all contested cases must be filed within 20 days of the filing of the decision, order or ruling. The workers' compensation commissioner shall specify in a notice filed in WCES or mailed to the parties by certified mail, return receipt requested, on the date of filing of the motion the issues to be reviewed and the additional evidence, if any, to be obtained by the parties. The hearing under this rule shall be heard in Polk County or in any locality designated by the workers' compensation commissioner.

This rule is intended to implement Iowa Code sections 17A.15 and 86.24.

ITEM 40. Amend rule 876—4.30(86,17A) as follows:

876—4.30(86,17A) Transcript on appeal or review. When an appeal to or review on motion of the workers' compensation commissioner is taken pursuant to rule 876—4.27(17A,86) or 876—4.29(86,17A), a transcript of the proceedings before the workers' compensation commissioner shall be filed with the workers' compensation commissioner within 30 days after the notice of the appeal is filed with the workers' compensation commissioner. The appealing party shall bear the initial cost of transcription on appeal and shall pay the certified shorthand reporter or service for the transcript. In the event there is a cross-appeal, the appellant and cross-appellant shall share the cost of the transcript. In the event the cost of the transcript has been initially borne by a nonappealing party prior to appeal, the nonappealing party is entitled to reimbursement within 30 days after serving on the appealing party proof of the cost of the transcript. If not so reimbursed, the appeal may be dismissed.

This rule is intended to implement Iowa Code sections 17A.12, 17A.15, 86.19, 86.24 and 86.40.

ITEM 41. Amend rule 876—4.32(86,17A) as follows:

876—4.32(86,17A) Recording of proceedings. The workers' compensation commissioner may arrange for the attendance of a certified shorthand reporter or mechanical means to record proceedings in contested cases. The workers' compensation commissioner may require the defendant employer or on appeal to the workers' compensation commissioner, the appellant, to arrange for the attendance of a certified shorthand reporter or adequate mechanical means of recording the proceedings. The charges for attendance shall be paid initially to the certified shorthand reporter or service by the employer or, on an appeal to the workers' compensation commissioner, the appellant. The charges shall be taxed as costs. The party initially paying the expense shall be reimbursed by the party taxed with the cost. If the expense is unpaid, it shall be paid by the party taxed with the cost.

This rule is intended to implement Iowa Code section 86.19.

ITEM 42. Amend rule 876—4.33(86) as follows:

876—4.33(86) Costs. Costs taxed by the workers' compensation commissioner or a deputy workers' compensation commissioner shall be (1) attendance of a certified shorthand reporter or presence of mechanical means at hearings and evidential depositions, (2) transcription costs when appropriate, (3) costs of service of the original notice and subpoenas, (4) witness fees and expenses as provided by Iowa Code sections 622.69 and 622.72, (5) the costs of doctors' and practitioners' deposition testimony, provided that said costs do not exceed the amounts provided by Iowa Code sections 622.69 and 622.72, (6) the reasonable costs of obtaining no more than two doctors' or practitioners' reports, (7) filing fees when appropriate, including convenience fees incurred by using the WCES payment gateway, and (8) costs of persons reviewing health service disputes. Costs of service of notice and subpoenas shall be paid initially to the serving person or agency by the party utilizing the service. Expenses and fees of witnesses or of obtaining doctors' or practitioners' reports initially shall be paid to the witnesses, doctors or practitioners by the party on whose behalf the witness is called or by whom the report is requested. Witness fees shall be paid in accordance with Iowa Code section 622.74. Proof of payment of any cost shall be filed with the workers' compensation commissioner before costs are taxed. The party initially paying the expense shall be reimbursed by the party taxed with the cost. If the expense is unpaid, it shall be paid by the party taxed with the cost. Costs are to be assessed at the discretion of the deputy workers' compensation commissioner or workers' compensation commissioner hearing the case unless otherwise required by the Iowa Rules of Civil Procedure governing discovery.

This rule is intended to implement Iowa Code section 86.40.

ITEM 43. Amend rule 876—4.35(86) as follows:

876—4.35(86) Rules of civil procedure. The rules of civil procedure shall govern the contested case proceedings before the workers' compensation commissioner unless the provisions are in conflict with these rules and Iowa Code chapters 85, 85A, 85B, 86, 87 and 17A, ~~or obviously inapplicable to the workers' compensation commissioner.~~ In those circumstances, these rules or the appropriate Iowa Code section shall govern. Where appropriate, reference to the word "court" shall be deemed reference to the "workers' compensation commissioner" and reference to the word "trial" shall be deemed reference to "contested case hearing."

This rule is intended to implement Iowa Code sections 17A.1, 17A.12, 17A.13, 17A.14, and 86.8.

ITEM 44. Amend rule 876—4.36(86) as follows:

876—4.36(86) Compliance with order or rules. If any party to a contested case or an attorney representing such party shall fail to comply with these rules or any order of a deputy workers' compensation commissioner or the workers' compensation commissioner, the deputy workers' compensation commissioner or workers' compensation commissioner may impose sanctions which may include dismissing the action without prejudice, excluding or limiting evidence, assessing costs or expenses, and closing the record in whole or in part to further activity by the party.

This rule is intended to implement Iowa Code section 86.8.

ITEM 45. Amend rule 876—4.38(17A) as follows:

876—4.38(17A) Recusal.

4.38(1) The workers' compensation commissioner, ~~a chief deputy workers' compensation commissioner~~ or a deputy workers' compensation commissioner shall withdraw from participation in the making of any proposed or final decision in a contested case if that person:

a. to h. No change.

4.38(2) No change.

4.38(3) In a situation where the workers' compensation commissioner, ~~chief deputy workers' compensation commissioner~~ or deputy workers' compensation commissioner knows of information which might reasonably be deemed to be a basis for recusal and decides voluntary withdrawal is

unnecessary, that person shall submit the relevant information for the record by affidavit and shall provide for the record a statement of the reasons for the determination that withdrawal is unnecessary.

4.38(4) If a party asserts disqualification on any appropriate ground, including those listed in subrule 4.38(1), the party shall file a motion supported by an affidavit pursuant to Iowa Code section 17A.17(7). The motion must be filed as soon as practicable after the reason alleged in the motion becomes known to the party.

If, during the course of the hearing, a party first becomes aware of evidence of bias or other grounds for disqualification, the party may move for recusal but must establish the grounds by the introduction of evidence into the record.

If the workers' compensation commissioner, ~~chief deputy workers' compensation commissioner~~ or deputy workers' compensation commissioner determines that recusal is appropriate, that person shall withdraw. If that person determines that withdrawal is not required, that person shall enter an order to that effect.

This rule is intended to implement Iowa Code section 17A.17.

ITEM 46. Amend rule 876—4.39(17A,86) as follows:

876—4.39(17A,86) Filing by facsimile transmission (fax). ~~When permission has been granted to be excused from using~~ If a party has been granted a waiver of the mandatory use of WCES, all documents filed with the agency division of workers' compensation pursuant to this chapter and Iowa Code section 86.24 except an original notice and petition requesting a contested case proceeding (see Iowa Code section 17A.12(9)) may be filed by facsimile transmission (fax). A copy shall be filed for each case involved. A document filed by fax is presumed to be an accurate reproduction of the original. If a document filed by fax is illegible, a legible copy may be substituted and the date of filing shall be the date the illegible copy was received. The date of filing by fax is the date the document is received by the agency division of workers' compensation. The agency division of workers' compensation will not provide a mailed file-stamped copy of documents filed by fax. The agency fax number for the division of workers' compensation is (515)281-6501.

This rule is intended to implement Iowa Code chapters 17A, 85, 85A, 85B and 86.

ITEM 47. Amend rule 876—4.45(17A,86) as follows:

876—4.45(17A,86) Length of briefs. Except by permission of the presiding deputy workers' compensation commissioner or by permission of the workers' compensation commissioner when an appeal pursuant to rule 876—4.27(17A,86) has been filed, principal briefs shall not exceed 50 Arabic-numbered pages. Reply briefs shall not exceed 25 Arabic-numbered pages. ~~Permission may be granted ex parte.~~ In the event of a cross-appeal, appellant's (cross-appellee's) responsive reply brief shall be considered a principal brief. The type used shall not be smaller than pica type, and each line shall contain an average of no more than 60 characters. If a brief is submitted in excess of the length allowed in this rule, the portion exceeding the allowable length will not be considered. This rule does not prohibit a presiding deputy workers' compensation commissioner or the workers' compensation commissioner from limiting the length of a brief. An exception to this rule is the length of briefs (three pages) in an application for alternate care. See subrule 4.48(11).

This rule is intended to implement Iowa Code sections 17A.12, 17A.15, 86.8, 86.18 and 86.24.

ITEM 48. Amend subrule 4.46(3) as follows:

4.46(3) The evidence submitted in the contested case proceeding shall be limited to the evidence submitted pursuant to rule 876—10.3(17A,85,86) and a copy of the determination made pursuant to rule 876—10.3(17A,85,86). This evidence shall be filed by the party requesting the contested case proceeding at the time the contested case proceeding is initiated. However, the workers' compensation commissioner may request that additional evidence be submitted or may grant submission of additional evidence if the workers' compensation commissioner is satisfied that there exists additional material evidence, newly discovered, which could not with reasonable diligence be discovered and produced

pursuant to rule 876—10.3(17A,85,86). The issues of the contested case proceeding shall be limited to the dispute considered in rule 876—10.3(17A,85,86).

ITEM 49. Rescind subrule **4.48(1)**.

ITEM 50. Renumber subrules **4.48(2)** to **4.48(8)** as **4.48(1)** to **4.48(7)**.

ITEM 51. Amend renumbered subrule **4.48(2)**, definition of “Employer,” as follows:

“*Employer*” means the person or entity who is liable for payment of medical services provided pursuant to the Iowa workers’ compensation laws and includes an employer, an employer who has been relieved from insurance pursuant to Iowa Code section 87.11, and an insurance carrier which provides an employer with workers’ compensation insurance.

ITEM 52. Amend renumbered subrule 4.48(7) as follows:

4.48(7) Notice of hearing. The workers’ compensation commissioner will notify the parties by ordinary mail, by facsimile transmission (fax) or by WCES of the time, place and nature of the hearing. No notice will be made until a proper application is received by the workers’ compensation commissioner. The notice will specify whether the hearing will be by telephone, in person or by other digital means.

ITEM 53. Adopt the following new subrule 4.48(8):

4.48(8) Appearance or answer. After being served with an application for alternate care, the employer shall file an appearance of answer as soon as practicable before the time of the hearing.

ITEM 54. Amend subrule 4.48(12) as follows:

4.48(12) Hearing. The hearing will be held by telephone, in person or by other digital means in Des Moines, Iowa. The employer shall have the right to request an in-person hearing if the employee has requested a telephone hearing in the application. The employer shall on the record respond to the allegations contained in the application. The hearing will be electronically recorded. If there is an appeal of a proposed decision or judicial review of final agency action, the appealing party is responsible for filing a transcript of the hearing.

Copies of the recording will be provided to the parties upon notice of appeal. A transcript shall be provided by the appealing party pursuant to Iowa Code section 86.24(4) and a copy thereof shall be served on the opposing party at the time the transcript is filed with the workers’ compensation commissioner unless the parties submit an agreed-upon transcript. If a party disputes the accuracy of any transcript prepared by the opposing party, that party shall submit its contentions to the workers’ compensation commissioner for resolution. Any transcription charges incurred by the workers’ compensation commissioner in resolving the dispute shall be initially paid pursuant to Iowa Code section 86.19(1) by the party who disputes the accuracy of the transcript prepared by the appellant.

ITEM 55. Amend subrule 4.48(13) as follows:

4.48(13) Represented party. A party may be represented as provided in Iowa Code section 631.14. The presiding deputy workers’ compensation commissioner may permit a party who is a natural person to be assisted during a hearing by any person who does so without cost to that party if the assistance promotes full and fair disclosure of the facts or otherwise enhances the conduct of the hearing. The employer and its insurance carrier shall be treated as one party unless their interests appear to be in conflict, and a representative of either the employer or its insurance carrier shall be deemed to be a representative of both unless notice to the contrary is given.

ITEM 56. Amend subrule 4.50(3) as follows:

4.50(3) Application for vocational training and education.

a. No change.

b. An application for vocational training and education must be filed in WCES unless ~~permission has been granted to file paper documents~~ a party has been granted a waiver of the mandatory use of WCES, in which case the party shall file the application for vocational training and education with the division of workers’ compensation. Applicant(s) must serve a copy of this form on the appellee(s) by certified mail, return receipt requested, or by personal service as in civil actions in accordance with rule

876—4.7(86,17A) and mail a copy to the attorney of record for the appellee(s), if known, in accordance with rule 876—4.13(86).

ITEM 57. Amend rule 876—4.51(86) as follows:

876—4.51(86) Agency notice of judicial review matters. A party who petitions for judicial review is responsible for filing with the division of workers' compensation's WCES shall file a copy of the petition for judicial review in WCES within ten days of filing the petition with a district court. If a party has been granted a waiver of the mandatory use of WCES, the party shall file a copy of the petition for judicial review with the division of workers' compensation within ten days of filing the petition with a district court. A party shall also file a copy of each appellate court decision in WCES within ten days of the date the appellate court decision was issued and filed. If a party has been granted a waiver of the mandatory use of WCES, the party shall file a copy of the appellate court decision with the division of workers' compensation within ten days of the date the appellate court decision was issued and filed. Within 45 days of the filing of the final appellate court decision, the same party shall notify the division of workers' compensation of the result of the ~~appellant~~ appellate process.

This rule is intended to implement Iowa Code chapters 17A, 85, 85A, 85B and 86.

ITEM 58. Amend rule 876—4.52(86) as follows:

876—4.52(86) Rules of electronic procedure. Chapter 16 of the Iowa Court Rules of Electronic Procedure shall govern the use and filings in WCES for contested case proceedings before the workers' compensation commissioner unless the provisions are in conflict with these rules ~~and~~ or Iowa Code chapters 85, 85A, 85B, 86, 87 and 17A or obviously inapplicable to the workers' compensation commissioner. In those circumstances, these rules or the appropriate Iowa Code section shall govern. Where appropriate, reference to the word "court" shall be deemed reference to the "workers' compensation commissioner or deputy workers' compensation commissioner," reference to the word "trial" shall be deemed reference to "contested case hearing," and reference to "clerk of court" shall be deemed reference to staff at the division of workers' compensation.

This rule is intended to implement Iowa Code chapters 17A, 85, 85A, 85B and 86.

ITEM 59. Amend subrule 6.2(6) as follows:

6.2(6) A detailed statement of claimant's need or other reason for a lump sum of money must be attached to the application. The analysis shall include disclosure of any attorney fee and case expense amount to be paid from the full commutation. ~~A commutation of less than ten weeks' benefits is presumed to be not in the best interest of the claimant.~~ If all parties are represented by an attorney, the parties may waive the statement of need, unless the case involves a dependent who is a minor.

ITEM 60. Adopt the following **new** subrules 6.2(9) and 6.2(10):

6.2(9) If all parties are represented by an attorney, a commutation of benefits is presumed to be in the best interests of the claimant.

6.2(10) If all parties are represented by an attorney, the parties may stipulate to the definitely determined period of compensation.

ITEM 61. Amend subrule 6.3(2) as follows:

6.3(2) Discount. When an original notice and petition for commutation of remaining future weekly benefits, either full or partial, is filed, the remaining future weekly benefits may be commuted to present dollar value. If the remaining future weekly benefits are converted to a present dollar value, the present dollar value shall be determined as provided in this subrule. A discount will be used to convert the value of remaining future weekly benefits to present dollar value. The discount will be based on a compound interest rate calculated pursuant to Iowa Code section 668.13(3) and in effect on the date informal agreement between the parties is reached for commutation and the number of weeks of remaining future benefits. The interest rate used to determine the discount shall be specified on the original notice and petition for commutation filed for approval by the workers' compensation commissioner.

ITEM 62. Amend rule 876—8.1(85) as follows:

876—8.1(85) Transportation expense. Transportation expense as provided in Iowa Code sections 85.27 and 85.39 shall include but not be limited to the following:

1. No change.
2. All mileage incident to the use of a private auto. ~~The per-mile rate for use of a private auto from August 1, 2005, through June 30, 2006, shall be 40.5 cents. For annual periods beginning July 1, 2006, and thereafter, the~~ The per-mile rate shall be the rate allowed by the Internal Revenue Service for the business standard mileage rate in effect on July 1 of each year.

3. to 5. No change.

Transportation ~~expense~~ expenses in the form of reimbursement for mileage which is incurred in the course of treatment or an examination, except under Iowa Code section 85.39, shall be payable at such time as 50 miles or more have accumulated or upon completion of medical care, whichever occurs first. Reimbursement for mileage incurred under Iowa Code section 85.39 shall be paid within a reasonable time after the examination.

The workers' compensation commissioner or a deputy workers' compensation commissioner may order transportation ~~expense~~ expenses to be paid in advance of an examination or treatment. The parties may agree to the advance payment of transportation ~~expense~~ expenses.

This rule is intended to implement Iowa Code sections 85.27 and 85.39.

ITEM 63. Amend rule 876—8.7(86) as follows:

876—8.7(86) Short paper. All paper filings before the workers' compensation commissioner shall be on white paper measuring 8½ inches by 11 inches.

This rule is intended to implement Iowa Code section 86.18.

ITEM 64. Renumber rules **876—8.9(85,86)** to **876—8.11(85)** as **876—8.10(85,86)** to **876—8.12(85)**.

ITEM 65. Adopt the following new rule 876—8.9(85):

876—8.9(85) Rate determination. When determining the rate of weekly compensation benefits for a contested case proceeding, the parties to the case shall use the ratebook in effect on the date of the claimant's injury published by the division of workers' compensation at www.iowaworkcomp.gov/ratebook.

This rule is intended to implement Iowa Code chapter 85.

ITEM 66. Amend rule 876—9.12(17A,22,85-87) as follows:

876—9.12(17A,22,85-87) Availability of records.

9.12(1) No change.

9.12(2) The record of declaratory rulings, ~~declaratory~~ declaratory orders, contested case proceedings, decisions, orders, rulings, settlements, and opinions are open for public inspection and copying.

9.12(3) No change.

9.12(4) Confidential records. The following records may be withheld from public inspection. Records are listed by category, according to the legal basis for withholding them from public inspection.

- a. to d. No change.

- e. Those portions of agency staff manuals, instructions, or other statements issued which set forth criteria or guidelines to be used by agency staff in auditing, in making inspections, in settling commercial disputes or negotiating commercial arrangements, or in the selection or handling of cases, such as operational tactics or allowable tolerances or criteria for the defense, prosecution or settlement of cases, when disclosure of these statements would:

- (1) Enable law violators to avoid detection;
- (2) Facilitate disregard of requirements imposed by law; or

(3) Give a clearly improper advantage to persons who are in an adverse position to the agency.

f. Records which constitute the work product of the workers' compensation commissioner, a deputy workers' compensation commissioner, an agency attorney, or an employee of the agency; attorney-client communications; or which are otherwise privileged. Attorney work product is confidential under Iowa Code sections 22.7(4), 622.10, and 622.11; Iowa R. Civ. P. 122(c); Fed. R. Civ. P. 26(b)(3); and case law. Attorney-client communications are confidential under Iowa Code sections 622.10 and 622.11, the rules of evidence, the Code of Professional Responsibility, and case law.

g. and *h.* No change.

9.12(5) Authority to release confidential records. The agency may have discretion to disclose some confidential records which are exempt from disclosure under Iowa Code section 22.7 or other law. Any person may request permission to inspect records withheld from inspection under a statute which authorizes limited or discretionary disclosure as provided in rule 876—9.4(17A,22,85-87). If the agency initially determines that it will release such records, the agency may, where appropriate, notify interested parties and withhold the records from inspection as provided in subrule 9.4(3).

ITEM 67. Amend rule 876—11.6(85,86) as follows:

876—11.6(85,86) Mandatory reporting deadline. All reporters must sign a partnering agreement and begin reporting by EDI Release 3.1 no later than July 16, 2019, or when WCES is available to the public, whichever is later. Reporting by any means other than EDI Release 3.1 after July 16, 2019, will not be acceptable, unless WCES is not available to the public. Reporters are responsible for reporting by EDI 3.1. A reporter may contract with another entity for reporting, but the reporter is ultimately responsible for reporting. Any Each reporter or entity reporting on behalf of a reporter must also sign an EDI partnering agreement.

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